

**IN THE UNITED STATES DISTRICT COURT FOR
THE EASTERN DISTRICT OF PENNSYLVANIA**

KATRINA NORTHERN

v.

**CITY OF PHILADELPHIA,
FIRE DEPARTMENT and
COMMISSIONER HAROLD B. HAIRSTON
in his individual capacity**

CIVIL ACTION

NO. 98-6517

MEMORANDUM

Broderick, J.

April 4, 2000

Plaintiff Katrina Northern ("Plaintiff" or "Northern"), a former Philadelphia firefighter, brings the instant employment discrimination claim against the City of Philadelphia Fire Department ("PFD") and Fire Commissioner Harold B. Hairston ("Hairston") (collectively "Defendants") alleging that she suffered a hostile work environment while employed by the PFD and that she was terminated by Hairston in a discriminatory manner based on her gender and race, in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e, as amended ("Title VII") and the Pennsylvania Human Relations Act, 43 P.S. § 951 et seq., as amended ("PHRA"). Presently before the Court are motions by Plaintiff to deem Defendants' request to certain enumerated requests for admissions admitted pursuant to Federal Rule of Civil Procedure 36(a) or, in the alternative, to compel more complete answers, and to compel Defendants to provide more complete answers to numerous interrogatories and requests for documents. Defendants have filed responses thereto. The information sought by Plaintiff in her motions has been grouped by the parties into five categories: comparative employees, facts relevant to

Plaintiff's specific discharge incident, Engine 45's history of discrimination, treatment of discrimination/ harassment complaints, damages information. Defendants object to various items of discovery on the grounds of relevance, privilege and undue burden. Defendants also assert that a number of these requests are now moot because they have already provided information responsive to the requests or that no such information exists. For the reasons stated below, Plaintiff's motions are granted in part and denied in part.

I. Legal Standard

Federal Rule of Civil Procedure 36(a) permits one party to serve upon another party

a written request for the admission, for purposes of the pending action only, of the truth of any matters within the scope of Rule 26(b)(1) set forth in the request that relate to statements or opinions of fact or of the application of law to fact....The party who has requested the admissions may move to determine the sufficiency of the answers or objections. Unless the court determines that an objection is justified, it shall order that an answer be served. If the court determines that an answer does not comply with the requirements of this rule, it may order either that the matter is admitted or that an amended answer be served.

Fed. R. Civ. P. 36(a). Federal Rule of Civil Procedure 37 authorizes a party who has received evasive or incomplete answers to discovery authorized by Federal Rule of Civil Procedure 26(a) to bring a motion to compel disclosure of the materials sought. Federal Rule of Civil Procedure 26(a)(5) authorizes parties to obtain discovery by, inter alia, the use of written interrogatories, requests for production of documents, and requests for admission.

Federal Rule of Civil Procedure 26(b)(1) provides, in relevant part: "Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action....The information sought need not be admissible at the trial if the information

sought appears reasonably calculated to lead to the discovery of admissible evidence." Federal Rule of Evidence 401 defines relevant evidence as "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Thus, the federal rules have established a liberal system of discovery "meant to insure that no relevant fact remain[s] hidden." Crawford v. Dominic, 469 F. Supp. 260, 262 (E.D.Pa. 1979). "Relevance is broadly construed and determined in relation to the facts and circumstances of each case." Hall v. Harleysville Ins. Co., 164 F.R.D. 406, 407 (E.D.Pa. 1996). "[D]iscovery requests may be deemed relevant if there is any possibility that the information may be relevant to the general subject matter of the action. As a result, discovery rules are to be accorded broad and liberal construction." Rhone-Poulenc Rorer Inc. v. Aetna Casualty & Surety Co., No. Civ. A. 88-9752, 1992 WL 394425 at *3 (E.D.Pa. Dec. 28, 1992). The party opposing discovery remains free, of course, to make any pertinent objection to the admission of any discovery responses at trial. See id.

Once a party opposing discovery raises an objection, the party seeking the discovery must demonstrate that the information sought is relevant to the pending action. See Momah v. Albert Einstein Med. Ctr., 164 F.R.D. 412, 417 (E.D.Pa. 1996). When this showing of relevance is made, the burden then shifts back to the party opposing discovery to show why the discovery should not be permitted. See id. The mere statement by a party that the discovery sought is overly broad, burdensome, oppressive, vague or irrelevant is "not adequate to voice a successful objection." Josephs v. Harris Corp., 677 F.2d 985, 992 (3d Cir. 1982). A showing of how each interrogatory or request for admission or request for production is not relevant or how each question is overly broad, burdensome, vague or oppressive is required. See id. Where a party

contends that the sought discovery causes an undue burden, they must demonstrate specifically how each item of discovery is objectionable by "offering evidence revealing the nature of the burden." Roesberg v. Johns-Manville Corp., 85 F.R.D. 292, 296 (E.D.Pa. 1980). The "number and detailed character of the interrogatories is not alone sufficient reason for disallowing them unless the questions are egregiously burdensome or oppressive." Id. at 297 (internal quotation omitted).

Plaintiff alleges that she was terminated from the PFD on the basis of her race and gender. In a disparate treatment case such as this one, Plaintiff must establish the elements of the prima facie case by a preponderance of the evidence: (1) she is a member of a protected class; (2) she was qualified for the position; (3) she suffered an adverse employment action; and (4) other employees not in the protected class were treated more favorably or she suffered the adverse employment action "under circumstances that give rise to an inference of unlawful discrimination." Texas Dep't of Community Affairs v. Burdine, 450 U.S. 248, 252-253 (1981). The "central focus of the inquiry in a case such as this is always whether the employer is treating some people less favorably than others because of their race, color, religion, sex, or national origin." Pivorotto v. Innovative Sys., Inc., 191 F.3d 344, 352 (quoting Furnco Construction Corp. v. Waters, 438 U.S. 567, 577 (1978))(internal quotations omitted). Thus, evidence that similarly situated employees outside of Plaintiff's class were treated more favorably by the employer may be used by Plaintiff to raise an inference of discrimination. See, e.g., Pivorotto, 191 F.3d at 356-57; Josey v. John R. Hollingsworth Corp., 996 F.2d 632, 638 (3d Cir. 1993).

Plaintiff also alleges that while she was employed by the PFD she was subjected to a hostile work environment. A plaintiff bringing such a claim under Title VII or the PHRA must

show that: (1) she suffered intentional discrimination on account of her gender; (2) the discrimination was pervasive and regular; (3) she was detrimentally affected by the discrimination (the subjective standard); (4) the discrimination would have detrimentally affected a reasonable person in the plaintiff's position (the objective standard); and (5) the existence of respondeat superior liability. Andrews v. City of Philadelphia, 895 F.2d 1469, 1482 (3d Cir. 1990). Courts must consider the totality of the circumstances in determining whether or not a work environment is objectively hostile. Andrews, 895 F.2d at 1485.

The Court will address the categories of discovery sought by Plaintiff in turn.

II. Comparative Employees

Interrogatory # 1 seeks information concerning firefighters or paramedics who have been charged with "Neglect of Duty" and/or "Disobedience of Orders." Interrogatory #18 seeks information concerning employees disciplined for off duty conduct. Document Request #19 seeks documents concerning employees listed in Interrogatory #1. Plaintiff has also propounded numerous requests for admission concerning discipline of other firefighters for a wide range of alleged infractions. The Court finds that these requests are overbroad and, thus, will limit the scope of the response which Defendants must make to these requests. Evidence that employees outside of the protected class were treated differently from Plaintiff is clearly relevant to Plaintiff's attempt to show that she was discriminatorily discharged. See, e.g., University of Pa. v. EEOC, 493 U.S. 182, 193 (1990) (recognizing relevance of treatment of similarly situated employees in determining whether or not discrimination occurred). The comparative employees must be similarly situated, however. "To be deemed similarly situated the individuals with

whom a plaintiff seeks to be compared must have engaged in the same conduct without such differentiating or mitigating circumstances that would distinguish their conduct or the employer's treatment of them for it." Bullock v. Children's Hosp. of Phila., 71 F. Supp. 2d 482, 489 (E.D. Pa. 1999) (internal quotation omitted). The Court finds that only an employee of the PFD who was charged with violation of Specification "4:00 - Failure to attend any fire or assignment to which you have been dispatched" or Specification "4:07 - Failure to comply with any order from a superior and/or supervisor" of PFD Directive #25 or who was alleged, during the time period specified in Plaintiff's requests, to have been present at a fire station and failed to make a run to which he or she was assigned is similarly situated. Thus, Defendants are directed to provide supplemental responses to Interrogatories # 1 and 18, Document Request # 19, and Requests for Admissions # 44, 45, 49-54, 76-79, 84-87 regarding such similarly situated individuals as defined by the Court.

Document Request #1 seeks the personnel files of all employees listed in response to Interrogatories # 1, 2, 18 and 19. Document Request #18 seeks the personnel records of several firefighters involved in the incident which led to Plaintiff's discharge. Document Request #28 seeks the personnel records of 19 enumerated fire department employees. These requests are overbroad. Although personnel files are discoverable, they contain confidential information and discovery of them should be limited. See, e.g., Miles v. Boeing Co., 154 F.R.D. 112, 115 (E.D.Pa. 1994). Here, Plaintiff is entitled only to her own personnel file and to the personnel files of employees who are similarly situated in that they were charged with violation of Specification 4:00 or Specification 4:07 of PFD Directive #25 or who were present at a fire station and did not go on a run to which they were assigned. It is undisputed that none of the

other employees involved in the incident which led to Plaintiff's discharge were disciplined and, thus, the Court finds that their personnel records are not relevant. Although, as explained below, Plaintiff is entitled to a full response to Interrogatories #2 and 19, she is not entitled to the personnel records of all those individuals without a more particularized showing of relevance. Thus, in response to Document Requests #1, 18, and 28 Defendants are directed to produce all responsive documents regarding Plaintiff and similarly situated individuals as defined by the Court.

Interrogatory #2 seeks information regarding the race, gender, and reason for discharge of all employees discharged by the PFD in the past ten years. Interrogatory #21 seeks information regarding the number of firefighters discharged by race and gender since 1990. Defendants object to these request on the basis of undue burden and relevance but do not adequately support their objection. Nor do Defendants refer to either of these interrogatories in their response to Plaintiff's motion to compel. As previously discussed, evidence which tends to show that persons who are not members of the protected class are treated more favorably by a defendant may be used as evidence of discrimination. Statistical evidence regarding the hiring and firing patterns of the defendant may be relevant to make such a demonstration. See, e.g., Narin v. Lower Merion School Dist., No. 99-1029, 2000 WL 264219 at *10 (3d Cir. Mar. 10, 2000) (recognizing that evidence of disparate hiring practices would be admissible if plaintiff could show that equal numbers of members and non-members of the protected class applied). The information sought by Plaintiff is relevant to show that Defendants may have treated members of the protected class differently in terms of termination decisions. Interrogatory #6 seeks information on the number of firefighters employed by the PFD by race and gender for the years

1994 to 1999. This information is not relevant to Plaintiff's hostile work environment and wrongful termination claims and Defendants will not be ordered to provide an additional response to this interrogatory. Thus, Defendants are directed to respond fully to Interrogatories #2 and 21.

Interrogatories # 4 and 5 and requests for admission # 96-98 seek information concerning the provision of separate restroom and changing facilities at PFD fire stations for men and women. The lack of separate changing and restroom facilities is cited by Plaintiff in support of her hostile work environment claim. Thus, the existence of these facilities is relevant to Plaintiff's claims and Defendants are directed to respond fully to Interrogatories # 4 and 5 as well as Requests for Admission # 96-98.

Interrogatory #8 and Document Request #8 seek information concerning other situations where Commissioner Hairston failed to follow the finding of the Fire Board of Investigation. Defendants contend that Hairston's assertion at his deposition that he could recall no other like situations is sufficient. Because this information is relevant to whether or not Hairston treated other employees differently than Plaintiff, Plaintiff is entitled to a full and complete response based upon PFD records rather than merely Hairston's memory. This is especially true where, as here, Hairston is being sued personally for allegedly aiding and abetting in the discrimination against Plaintiff by terminating her in a discriminatory manner. Thus, Defendants are directed to respond fully to Interrogatory #8, Document Request #8, and Request for Admission #46. Similarly, Defendants are directed to respond fully to Interrogatory #19 seeking information on whether Hairston terminated other employees without interviewing them first.

III. Engine 45's History of Discrimination

Interrogatory #7 seeks the names of all female and African American firefighters who have been stationed at Engine 45 since 1990 and the dates of their assignment. In response, the Defendants assert that only one female firefighter has ever been assigned to Engine 45 as a regular assignment but numerous female firefighters have been detailed there for short periods of time as have a large number of African American firefighters. Thus, Defendants assert this interrogatory imposes an undue burden. Given the wide scope of the information sought and its questionable relevance to Plaintiff's case, the Court will not require Defendants to provide any further response to Interrogatory #7.

IV. Treatment of Discrimination/Harassment Complaints

Interrogatories # 14 and 17 seek information concerning complaints and civil actions alleging sexual and/or racial harassment and discrimination by the PFD. Document Request #2 seeks all documents relating to such complaints and the PFD's response. Interrogatory # 15 seeks information regarding employee discipline related to a sexual and/or racial harassment complaint. Evidence of acts of harassment of other employees is relevant to whether or not a hostile or discriminatory environment existed and evidence of other complaints are relevant to whether or not the employer knew or should have known that harassment or discrimination was occurring. See, e.g., Hurley v. Atlantic City Police Dep't, 174 F.3d 95, 111 (3d Cir. 1999). The information sought by Plaintiff in these requests is relevant and not unduly burdensome. Thus, the Court directs Defendants to fully respond to Interrogatories # 14, 15, and 17 and Document Request # 2.

Request for Admission # 111 concerns the PFD's investigation into complaints of discrimination regarding Plaintiff's discharge. Defendant objects to this request as being vague and ambiguous. Although it is true that a party is not required to respond to a request that contains vague or ambiguous statements, see Fulhorst v. United Technologies Automotive, Inc., No. Civ. A. 96-577-JJF, 1997 WL 873548 *1 (D. Del. Nov. 17, 1997), the Court does not find this request so unclear that Defendants can not reasonably formulate a response. Thus, Defendants are directed to fully respond to Admission # 111.

V. Damages Information

Interrogatory #23 seeks information about employment benefits which Plaintiff would have received if she had not been fired. Defendants contend that this request is vague, ambiguous and requests information Plaintiff already possesses. Plaintiff seeks both back pay and front pay in this suit. Thus, the amount that she would have received in pay increases and pension, as well as other benefits, are relevant to her damages claim. The Court, therefore, directs Defendants to fully answer Interrogatory # 23.

Document Request # 26 seeks insurance policies held by Commissioner Hairston. Defendant objects on the grounds of relevancy. Commissioner Hairston is named as a defendant in this suit in his individual capacity. Thus, Plaintiff is entitled to copies of any insurance policies which could potentially be a source of recovery for any judgment she may obtain against Hairston. Defendants assert that Hairston's homeowners policy would not cover any judgment against him. That may be the case, but that is not a determination for this Court at this time. Hairston's insurance is relevant if it would be available to satisfy a judgment which may be

entered against him in this case. Therefore, Defendants are directed to provide copies of any insurance policies held by Commissioner Hairston which could potentially be available to recover damages against him under any judgment Plaintiff may obtain in this case in response to Document Request #26.

Finally, as to Interrogatories # 3 and 16 and Document Requests # 22, 23 and 31-36 Defendants have asserted that no such information exists or that all existing information has already been provided to Plaintiff. Defendants have also provided the Court with an affidavit from the PFD Personnel Officer verifying the non-existence of many of these records. Although the Court notes that Defendants should properly have made these responses to Plaintiff directly in response to her discovery requests, rather than in Defendants' response to Plaintiff's motion to compel, the Court finds these responses adequate. No further response to Interrogatories # 3 and 16 and Document Requests # 22, 23, and 31-36 will be required and the Court will treat Plaintiff's motion as to these items as moot.

For the reasons heretofore stated, the Court directs Defendants to fully respond to Interrogatories # 2, 4, 5, 8, 14, 15, 17, 19, 21, and 23 and Document Requests # 2 and 8. Although the Court finds that many of Defendants' responses to Plaintiff's requests for admission are inadequate, the Court will not deem them admitted. Rather, the Court directs Defendants to provide full responses to Plaintiff's requests for admissions # 46, 96-98, and 111. In response to Document Request #26, Defendants are directed to provide copies of any insurance policies held by Commissioner Hairston which may potentially serve as a source of recovery on any judgment

Plaintiff may obtain against him in this case. Finally, the Court directs that Defendants provide responses to Interrogatories # 1, 18; Admissions # 44, 45, 49-54, 76-79, 84-87; and Document Requests # 1, 18, 19, and 28 limited to Plaintiff's personnel records and employees who are similarly situated to Plaintiff because they were charged with violation Specification 4:00 or Specification 4:07 of PFD Directive #25 or who were alleged to be present at a fire station and failed to make a run to which they were assigned. Thus, the Court will grant in part and deny in part Plaintiff's motion to have requests for admissions deemed admitted. The Court will also grant in part and deny in part Plaintiff's motion to compel responses to Plaintiff's interrogatories and document requests. Because the Court recognizes that Plaintiff is currently required to respond to Defendant's motion for summary judgment before Plaintiff receives the discovery Ordered by this Court to be produced, the Court will also grant Plaintiff additional time to respond to Defendant's motion for summary judgment.

An appropriate Order follows.

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NO. 98-6517

ORDER

AND NOW, this 4th day of April, 2000; Plaintiff having filed a motion pursuant to Federal Rule of Civil Procedure 36(a) seeking to have several enumerated requests for admission deemed admitted based on Defendants' alleged insufficient answers or, in the alternative, to have Defendants provide more complete responses; Plaintiff having filed a supplement to that motion limiting the number of admissions in dispute; Defendants having filed a response thereto; Plaintiff also having filed a motion to compel responses to numerous interrogatories and document requests; Defendant having filed a response thereto; Plaintiff also having filed a motion seeking an expedited ruling on her previous discovery motions because her response to Defendants' motion for summary judgment is due on April 5, 2000; Defendant having filed a response thereto; for the reasons stated in this Court's memorandum of this same date;

IT IS ORDERED that Plaintiff's motion to deem certain requests for admissions admitted (Doc. No. 23 and 28) is **GRANTED IN PART AND DENIED IN PART** as discussed in this Court's accompanying memorandum;

IT IS FURTHER ORDERED that Plaintiff's motion to compel responses to interrogatories and document requests (Doc. No. 26) is **GRANTED IN PART AND DENIED**

IN PART as discussed in this Court's accompanying memorandum;

IT IS FURTHER ORDERED that Defendants shall provide full and complete answers to the following as described in this Court's accompanying memorandum on or before **April 10, 2000**: Interrogatories # 2, 4, 5, 8, 14, 15, 17, 19, 21, 23 and Requests for Admissions # 46, 96-98, 111;

IT IS FURTHER ORDERED that Defendants shall produce all documents responsive to the following requests for production as described in this Court's accompanying memorandum on or before **April 10, 2000**: Document Requests # 2, 8, 26 (as limited in the Court's memorandum);

IT IS FURTHER ORDERED that Defendants shall provide full and complete answers as well as all responsive documents, as described in this Court's accompanying memorandum, on or before **April 10, 2000** as to Interrogatories # 1, 18; Requests for Admissions # 44, 45, 49-54, 76-79, 84-87; and Document Requests # 1, 18, 19, 28 to the extent that the information sought concerns Plaintiff or any individual who was charged with violating specifications 4:00 or 4:07 of PFD Directive #25 or who was alleged to be present at a fire station and who did not go on a run to which he or she was assigned;

IT IS FURTHER ORDERED that Plaintiff's motion for an expedited ruling (Doc. No. 31) is **DISMISSED AS MOOT** ;

IT IS FURTHER ORDERED that the time in which Plaintiff shall file a response to Defendants' motion for summary judgment is extended to **April 17, 2000**;

IT IS FURTHER ORDERED that the Final Pretrial Conference currently scheduled for April 14, 2000 shall now be held on **May 2, 2000 at 10:00 a.m.** in chambers (Room 10613, U.S.

Courthouse, 601 Market Street, Philadelphia, PA) for the purpose of reviewing the Final Pretrial Order prior to trial;

IT IS FURTHER ORDERED that the trial shall commence on **May 15, 2000 at 10:00 a.m.**

RAYMOND J. BRODERICK, J.